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May 26, 1998

Ms. Kathleen Schnieders (C14J)
Assistant Regional Counsel
Office of Regional Counsel
United States Environmental Protection
Agency
Region V
77 West Jackson Boulevard
Chicago, Il 60604-3590

Re: Notice of Performance Delay at Albion--Sheridan Superfund Site

Dear Ms. Schnieders:

This letter is in response to your undated letter that was faxed to my office on May 4, 1998. As you know, I have tried unsuccessfully on several occasions to reach you by phone to discuss your letter. My schedule continues to keep me out of the office until the end of this week, so I thought I would simply attempt to respond by letter.

As you know from my voice messages, my clients and I are disappointed in the tone and the substance of your letter. My clients are the only UAO recipients who have been actually performing the UAO. Neither the City of Albion nor Decker Manufacturing could possibly be considered a cooperating party in implementing the UAO. The statement in your letter that Decker has acquired land "at the request of EPA" comes as a surprise to my clients. Please provide me with a copy of any documentation of EPA's request to Decker that it acquire this land. My clients collectively are the approved site coordinators, and they have never received notice from EPA of such a directive. As you know, we have never received clear authority from Decker to use this newly acquired property for any purpose necessary to facilitate implementation of the UAO. Correspondence from Decker has clearly indicated contingencies. You have informed us that you will, if necessary, order Decker to allow us full unencumbered access. That has not happened as yet. Please arrange for the issuance of the suggested order so that the record will be crystal clear. While Mr. Caldwell has provided you with oral assurances, nothing has been reduced to writing.

We recognize that any litigation, in and of itself, possibly might not present an insurmountable barrier to implementing at least portions of the Order. The complexity of this litigation, however, is symptomatic of basic problems with the approach to this site. The

Ms. Kathleen Schnieders
May 26, 1998
Page 2

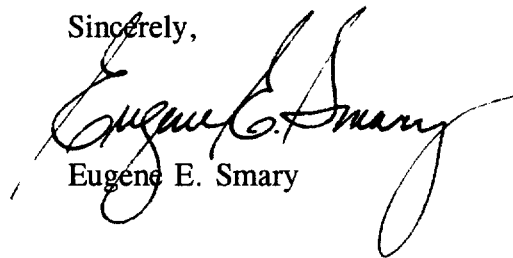
combination of issues that must now be addressed in the context of the litigation are critical to our ability to proceed smoothly with the remediation of the site. It could not have been a "foreseeable outcome" that EPA would apply different standards to different UAO recipients and delay enforcement against one for this long, and take no enforcement action against another.

As to landfill ownership, we would appreciate receiving documentation that title is now clear. The State of Michigan's response to our most Freedom of Information Act request does not support the statement made in your letter. I gather that your comments are based on a telephone conversation. Have you sought and received documentation? If you have, please send me a copy so that we may satisfy ourselves that we have an access agreement with the actual owner of the site.

Finally, your statement regarding possible imposition of civil penalties is unfortunate. As you know, my clients are the only UAO recipients implementing the UAO and have notified you in good faith of the basis for delay. Penalties should be sought at this site, but only against the two other recipients of the UAO.

I look forward to receiving the requested documentation and to discussing these issues with you in greater detail. My clients are encouraged by your invitation to convene a meeting of the parties to the litigation. We strongly believe that the issues are best resolved through mutual discussion and agreement, and therefore would be willing to participate in such a meeting. Please let me know possible dates.

Sincerely,



Eugene E. Smary

lap
cc: Mr. Jon Peterson
Cooper Industries
Corning, Inc.

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